

**IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE RAJA SAEED AKRAM KHAN, CJ  
MR. JUSTICE RAZA ALI KHAN

**CIVIL APPEAL No. 52 OF 2023**

(on appeal from the  
judgment of the High  
Court dated 06.12.2022,  
passed in writ petition  
No. 88 of 2014)

Shahid Mehmood s/o Muhammad Din resident of Bhimber  
Khas, Tehsil and District Bhimber.

...Appellant(s)

**VERSUS**

Custodian of Evacuee Property of Azad Jammu and  
Kashmir, Muzaffarabad and others.

...Respondent(s)

**Appearances:**

For the Appellant: Hafiz Fazal-ur-Rehman Dar,  
Advocate.

For Respondent No.8: M. Saeed Khadim Chaudhary,  
Advocate.

Date of hearing: 16.04.2024

**JUDGMENT:**

**Raza Ali Khan, J:-** This appeal, by our leave, arises out of the judgment of the High Court dated 06.12.2022, whereby, the writ petition filed by the appellants, herein, was dismissed.

2. The pertinent background of the aforementioned appeal entails the appellant's assertion regarding a piece of land spanning 02 kanal, delineated as survey no. 1298/594, situated in Bhimber Khas, Tehsil and District Bhimber. It was contended that the said land was initially allotted to his father and duly recorded in the revenue records. Subsequently, a portion measuring 09 marla, was allocated to respondent No. 8, contravening the appellant's rights. The appellant contested the allotment before the Custodian, resulting in the cancellation of the allotment to respondent No. 8, on December 24, 2011. Respondent No. 8, then petitioned the District Collector for rectification of the revenue record pertaining to the disputed survey number. Following a report of the revenue officials, the Collector ordered the cancellation of entries pertaining to the 09 marla land on May 2, 2012; these proceedings were made without summoning or hearing the appellant and other concerned parties, rendering them legally flawed. Furthermore, respondent No. 8, leveraging the Collector's order, petitioned the Custodian for a review, which was granted on February 21, 2014, rescinding the earlier cancellation order. The appellant challenged this decision through a writ petition before the High Court,

culminating in the dismissal of their case via the judgment dated December 6, 2022.

3. Hafiz Fazal-ur-Rehman Dar, the learned Advocate, representing the appellant, contended that the judgment rendered by the High Court demonstrates a departure from legal principles, factual evidence, and case record. He asserted that both the Custodian's decision dated February 21, 2014, and the High Court's judgment dated December 6, 2022, lack validity due to misinterpretation and oversight of pertinent evidence and record. He further argued that the Custodian exceeded his authority by adjudicating on the second review petition subsequent to the acceptance of the appellant's initial review petition. He emphasized that according to established precedents of this Court, the second review petition should have been summarily dismissed. However, the High Court failed to approach the matter judiciously and arbitrarily dismissed the writ petition without providing substantiated reasons for its decision. In support of his argument, the learned Advocate cited a precedent from this Court titled *Dr. Munawar Ahmed and others vs. Muhammad Aslam and others*<sup>1</sup>, and urged for the acceptance of the appeal.

4. On the contrary, Mr. Muhammad Saeed Khadim Chaudhary, the learned Advocate representing the respondents, contended that the High Court's judgment aligns with legal principles, factual realities, and the comprehensive case record. He argued that the appellant's review petition before the Custodian was

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<sup>1</sup> [2016 SCR 1014]

rightfully dismissed due to discrepancies between the land allocated and the appellant's claims, as well as subsequent transfers of ownership. He elucidated that the land in question, assigned with distinct khasra numbers conflicting with the appellant's assertions, had been transferred to Khalid Sharif. Additionally, he highlighted the involvement of the appellant's father in filing objections during the application for *Fard Badar*, which led to subsequent legal proceedings ultimately resolved by the Member Board of Revenue. Additionally, he underscored that the disputed land had already been transferred to Nasir Sharif, Qamar Sharif, and Faisal Sharif, parties not impleaded in the appellant's writ petition. He argued that their absence as necessary parties undermined the effectiveness of any potential court order, rendering the writ petition liable for dismissal on this basis alone. To bolster his argument, he referenced a precedent from this Court titled *Mumtaz Hussain and others vs. M. Fazil Khan and another*<sup>2</sup>, and urged for the dismissal of the appeal.

5. Having deliberated upon the arguments presented by the learned counsel for both parties and thoroughly examined the case record, it is apparent that the learned counsel for the respondents has raised a preliminary objection regarding the maintainability of the writ petition due to the non-joinder of necessary parties. It has been contended that the land in question has already been transferred by Muhammad Sharif to his sons, namely Nasir Sharif, Qamar Sharif, and Faisal Sharif, who have not been impleaded as parties in the

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<sup>2</sup> [2000 SCR 600]

writ petition. This objection carries weight, as the record indicates that the aforementioned individuals have indeed acquired ownership of the disputed land, yet they were not brought into the proceedings as respondents before either the High Court or this Court. It is firmly established in legal precedent that the absence of a necessary party precludes the issuance of an effective writ. Reliance in this regard may be placed to the case reported as *Shafqat Hayyat v. Muhammad Shahid Ashraf and 18 others*<sup>3</sup>, wherein, it has been observed as under:-

"18. The writ was not properly constituted as the impugned orders were passed on the recommendations of the Selection Committee. However, the selection authority was not impleaded in the line of answering respondents before the High Court."

In *Qazi Liaqat Ali Qureshi v. Hafiz Muhammad Ishaq and 3 others*<sup>4</sup>, it was laid down that if a necessary party in whose absence no effective writ could be issued was not impleaded, the writ is liable to be dismissed on this sole ground. The same proposition was resolved by this Court in the case reported as *Kh. Ghulam Qadir and 5 others v. Divisional Forest Officer Demarcation and 3 others*<sup>5</sup>, and at page 165 of the report, observed as under:-

"6. We have also noticed that the appellants before the High Court did not array Board of Revenue as one of the respondents. Member Board of Revenue was however, arrayed as one of the respondents in the writ petition. In our view the writ petition filed before the High Court

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<sup>3</sup> [2005 SCR 57]

<sup>4</sup> [1998 PLC (C.S.) 153]

<sup>5</sup> [1996 SCR 161]

by the appellants was not competent on account of non-joinder of the necessary party.”

6. As far the merits of the case, is concerned, it is noteworthy that the decisions of the Assistant Rehabilitation Commissioner (ARC) and Commissioner Rehabilitation were contested before the Custodian through an application filed by the appellant. This application was granted, overturning the orders of the Commissioner and ARC regarding the cancellation of the allotment in favor of Muhammad Din. The Custodian observed that the proper procedure for canceling the allotment had not been followed. Respondent No. 8 subsequently challenged this decision by filing a review petition before the Custodian, which was also granted, leading to the restoration of the allotment in their favor. The Custodian's decision was then challenged before the High Court, but it too was dismissed. Upon examining the order passed in the review petition, it is evident that the learned Custodian, after careful consideration of the documentary evidence provided by both parties, concluded that the original order of December 24, 2011, directed Muhammad Sharif Butt to proceed under the Rehabilitation Act. However, evidence was produced demonstrating that no allotment chit had been issued in favor of Shahid Mehmood & others, predecessors of the appellant, indicating their lack of competency to acquire proprietary rights over the disputed land. It was further revealed that the predecessors of Shahid Mehmood and others had obtained proprietary rights over other parcels of land, specifically survey no. 54 (min) and survey no. 94 (min). After rectifying entries in the cultivation column and attesting the mutation, the entry in favor of

respondent Muhammad Sharif Butt for survey no. 1298/594, measuring 09 marla, was appropriately made, resulting in the deletion of Muhammad Din, the predecessor of the appellant, from the record. Consequently, Muhammad Din is no longer considered an allottee of the disputed land. Thus, it is concluded that neither the Custodian nor the High Court committed any legal irregularities in issuing the impugned judgments, and the petitioner's case lacks merit.

Based on the foregoing considerations, this appeal is hereby dismissed, with no costs imposed.

**JUDGE**

**CHIEF JUSTICE**

Mirpur,  
16.04.2024